



MEMORANDUM

DATE: November 5, 2004

TO: Land Reclamation Commission

FROM: Richard O'Dell; Environmental Specialist
(original signed by Richard O'Dell)

SUBJECT: **Trager Limestone: History of Events and Formal Complaint # 2699 for failure to abate Notice of Violation #623-001 & #623-002.**

September 10, 2003 An inspection was conducted at the Trager Limestone Gallatin Quarry. During the inspection, and in the associated inspection report, the operator was informed that the operation was out of compliance with several issues and that they needed to be corrected.

June 24, 2004 Another inspection of the Gallatin Quarry was conducted. During that inspection it was noted that none of the previously noted deficiencies had been corrected.

July 19, 2004 Notice of Violation #623-001 & #623-002 were received by the operator. NOV #623-001 was issued for failure to obtain a Land Reclamation Permit prior to affecting land as part of a surface mining operation. NOV #623-002 was issued for excavating an area within approximately ten feet of the edge of a Daviess County public road without first obtaining a variance to do so.

August 03, 2004 Initial abatement of both violations was due. The abatement requirements for NOV #623-001 were to cease all operations on areas not currently permitted, submit a complete and accurate permit amendment application, and respond to all written staff comments. The abatement requirements for NOV #623-002 were to submit a letter from the local county road authority that stated what type and size of a safety barrier would be satisfactory to them to be placed

Integrity and excellence in all we do

along the

county road contained in the violation while still meeting the minimum height requirement of three feet as per 10 CSR 40-10.050(3), then construct the safety barrier, and also backfill the excavation area contained in the violation to the approximate original contour while maintaining free drainage and ensuring that all slopes are traversable by farm machinery.

September 01, 2004	An inspection of the site was conducted. Both violations remained unabated.
September 07, 2004	The operator was contacted via a phone call and was told that both violations remain unabated and explained what needed to be done to properly abate them.
September 13, 2004	The operator received a certified letter explaining that NOV #623-001 remained unabated and what needed to be done to abate the violation.
September 22, 2004	An inspection of the site was conducted. Both violations remained unabated.
October 19, 2004	An inspection of the site was conducted. Both violations remained unabated.
November 5, 2004	As of this date, both violations remains unabated. Numerous other phone calls have been made in an attempt to bring the operator into compliance.

RECOMMENDATION:

As all regulatory time frames for appeal of both Notices of Violation have expired and the operator has neglected to perform the required remedial actions as stated in the notices, the staff recommends that the Land Reclamation Commission:

1. Sign the Notice of Formal Complaint for failure to abate Notice of Violation #623-001 & #623-002.
2. Notify the operator that a formal complaint has been filed and that fifteen (15) days are allowed in which to request a hearing if desired or to remedy the basis of the formal complaint.

BEFORE THE
LAND RECLAMATION COMMISSION
STATE OF MISSOURI

In the Matter of
Trager Limestone

)
)

No. 2699

NOTICE

Upon the filing of a formal complaint against the above by the Director, which formal complaint is attached hereto and incorporated by reference, the Commission hereby orders that formal written notice of said filing, together with a copy of the formal complaint, be served upon the person complained against.

The Commission further notifies the operator that he has the right to request a hearing as provided in section 444.787, if the request for such hearing is made within fifteen (15) days of receipt of this notice.

SO ORDERED this _____ day of _____, 20_____.

LAND RECLAMATION COMMISSION

BEFORE THE
LAND RECLAMATION COMMISSION
STATE OF MISSOURI

In the Matter of
Trager Limestone

)
)

No. 2699

FORMAL COMPLAINT

The Director of the Land Reclamation Commission (Director) makes the following formal complaint against Trager Limestone pursuant to Section 444.787, RSMo 2001:

1. On July 19, 2004, Trager Limestone received Notice of Violation #623-001 & #623-002 via certified mail.

2. The nature of the violations are as follows:

NOV #623-001: The operator has failed to obtain a Land Reclamation Permit prior to affecting land as part of a surface mining operation.

NOV #623-002: The operator has excavated an area within approximately 10' of the edge of a Daviess County public road without first obtaining a variance to do so.

3. The statute(s) and regulation(s) violated are identified as:

NOV #623-001: Section 444.770 and 444.772; and 10 CSR 40-10.010.

NOV #623-002: Section 444.774(5), (6) and 10 CSR 40-10.050(2), (3).

4. The remedial actions required for the Notices of Violation are as follows:

NOV #623-001: 1) Cease all mining operations on areas not currently permitted and bonded (This includes topsoil or overburden removal or placement, excavation, or any other mining related activity but excludes stabilization activities); and 2) Submit a complete and accurate permit amendment application that, at a minimum, includes all the areas contained in this violation; and 3) Accurately and completely respond to all written staff comments.

NOV #623-002: 1) Submit a letter from the local county road authority that states what type and size of a safety barrier would be satisfactory to them to be placed along the county road contained in this violation while still meeting the minimum height requirement of three (3) feet as per 10 CSR 40-10.050(3); and 2) Construct a safety barrier as per the county road authority requirements and 10 CSR 40-10.050(3); and 3) Backfill the excavation area contained in this violation to the approximate original contour while maintaining free drainage of the area and keeping all slopes so as to be traversable by farm machinery; and 4) Accurately and completely respond to all written staff comments.

5. The staff director's penalty assessments for the notices are as follows:
NOV #623-001: \$1000.00.
NOV #623-001: \$1000.00.
6. Both Notices of Violation listed above were received by the operator on July 19, 2004. Both notices has exceeded the abatement dates. The operator has not complied with the remedial measures identified in the notices as of the date of this Formal Complaint even though every effort has been made to allow ample time in which to do so.
7. 10 CSR 40-10.070(3)(A)1 states that: "The director shall issue a formal complaint to the commission if the abatement measures have not been met within the prescribed time frame."
8. 10 CSR 40-10.070(3)(A)2 states that: "The director shall issue a formal complaint to the commission if the administrative penalties assessed by the Commission have not been paid within ninety (90) days.
9. Section (3)(B) further states: "The formal complaint shall be in writing, signed by the director and include: 1. The nature of the violation; 2. The law or regulation violated; 3. Remedial action required; 4. The statement that the operator has a right to a hearing; and 5. The proposed penalty assessment on the original violation."
10. Section (3)(C) states: "The operator may request a hearing by the commission within fifteen (15) days of receipt of the complaint by the operator."

It is the recommendation of the Staff Director that the actions outlined in paragraph 6 constitute both adequate attempts to abate both violations and are evidence that further attempts would not be effective.

It is further the position of the Staff Director that the failure on the part of the operator to abate Notice of Violation #623-001 & #623-002 constitutes adequate grounds, under the provision of section 444.787 and 10 CSR 40-10.070 for the Staff Director to seek permit revocation and collection of the associated bond(s).

WHEREFORE, the Staff Director requests the Commission to revoke permit #190 issued to Trager Limestone provided that the operator does not request a hearing on this matter within fifteen (15) days of receipt of the formal complaint or successfully completes the abatement measures specified in the Notice of Violation also within the fifteen (15) day timeframe.

Respectfully submitted

Larry P. Coen, R. G.
Staff Director, Land Reclamation Program

(Date)